U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-C-N-A-R-C-

DATE: SEPT. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of healthcare services, seeks classification for the Beneficiary, a physical therapy manager, as a member of the professions holding an advanced degree who is employed in a Schedule A, Group I occupation. *See* section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A); § 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); 20 C.F.R. § 656.5(a). The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. professional nurses and physical therapists who are able, willing, qualified, and available, and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign nationals in theses occupations. 20 C.F.R. § 656.5.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner did not establish that the Beneficiary holds an advanced degree.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and previously provided documents.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1), (c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify "[t]hat the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type" and "[t]hat the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States." The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

II. ANALYSIS

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition, including an uncertified ETA Form 9089 in duplicate, is filed directly with USCIS. 8 C.F.R. § 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15. USCIS determines whether a foreign national

meets the job requirements specified on a labor certification and the requirements of the requested immigrant classification.[1]

The Petitioner must establish that the Beneficiary is not only a member of the professions holding an advanced degree, but also that he satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the job offer portion of the ETA Form 9089 to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with a beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

On the ETA Form 9089, Part H, the Petitioner indicated that a master's degree in physical therapy or a foreign educational equivalent plus two years of experience are the requirements for the position. The Petitioner further signified that an alternate combination of experience and education is not acceptable. Thus, the Petitioner must establish that the Beneficiary meets the minimum education requirement of the offered position by virtue of his degree alone. In addition, as the record does not show that the Beneficiary has at least five years of experience following a U.S. baccalaureate degree or a foreign equivalent degree, the Petitioner must demonstrate that the Beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate to qualify as a member of the professions holding an advanced degree.

The record includes a copy of the Beneficiary's 2011 bachelor of science in physical therapy and transcript from the in the Philippines, a "Report of Evaluation of Educational Credentials" (report) from the and an Course Work Evaluation Checklist (evaluation). The report states that the Beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and that the school "is comparable to a regionally accredited college or university in the U[nited] S[tates]." The report also lists the Beneficiary's attendance at the in 2012. The admission requirement for both schools is the equivalent of a diploma from a U.S. high school. The report found that the Beneficiary's "education

[1] *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (both holding that the immigration service has authority to make preference classification decisions).

is substantially equivalent to the first professional degree in physical therapy in the United States" which is "the master's degree or higher."

The Director's decision noted that the Electronic Database for Global Education (EDGE) concludes that "the Bachelor of Arts/Science/Commerce, etc. degree in the Philippines 'represents attainment of a level of education comparable to a bachelor's degree in the United States.'" Under the credential description section, EDGE states that the bachelor's degree is "four to five years beyond the high school diploma (except Law which is an advanced degree as in the USA) with four being the most common length," but that "(Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five)." USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.[2]

EDGE's determination is that the five year physical therapy degree program in the Philippines is equivalent to an undergraduate level education in the United States, not an advanced degree. Unlike [redacted] which bases its determination on credits for coursework, EDGE looks at the educational system of the country and the degree itself to make its determination. The Petitioner does not address EDGE's findings on appeal.

In response to the Director's notice of intent to deny (NOID) and on appeal, the Petitioner relies on the Beneficiary's certification by [redacted] In a January 23, 2013 letter, [redacted] Managing Director of Credentialing Services at [redacted] explained that U.S. baccalaureate degree programs have not been accredited by the [redacted] since 2001 and have converted to post-baccalaureate programs. Accordingly, the current first professional degree in the United States is a master's degree or higher. As stated by the Director in his decision, however, "the fact that, after 2001, the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy."

The Director advised the Petitioner that a credentialing organization's verification of an individual's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii). The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). [redacted] authority does not extend to determining whether (1) the Beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the Beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition.

[2] *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

In addition, 8 C.F.R. § 212.15(f)(i) authorizes [redacted] to look at all of the individual's credentials in the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. As [redacted] evaluates coursework and credentials beyond the Beneficiary's degree, it does not establish whether the Beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate, the requirement for the underlying classification as an advanced degree professional, or a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005 at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the Institute of Chartered Accountants of India, was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

As stated in the Director's decision:

> Where the analysis of the beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a "foreign equivalent degree. The provided information makes it clear that [redacted] looks at an individual's coursework (which may include coursework from multiple sources), and not the individual's degree, to determine "substantial equivalence," which is a different standard.

Based upon [redacted] methodology, their evaluation is not a proper basis to determine whether the Beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the requirement listed on the ETA Form 9089 or the foreign equivalent of an advanced degree as required by the classification.

As such, the Petitioner has not established that the Beneficiary's Filipino bachelor's degree meets the minimum requirements set forth on the ETA Form 9089 or that the Beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2).

In addition to the above, the regulation at 20 C.F.R. § 656.10(d) sets forth the notice of filing requirements related to an application for a labor certification. Although not addressed by the Director, the Petitioner did not provide the correct address of the appropriate Certifying Officer and, therefore, the notice of filing does not comply with the regulation at 20 C.F.R. § 656.10(d)(3)(iii).[3]

III. CONCLUSION

The Petitioner has not established that the Beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the Petitioner has not established that the

[3] As of June 1, 2008, DOL centralized the processing of permanent applications in the Atlanta National Processing Center (NPC). *See* https://www.foreignlaborcert.doleta.gov/contacts.cfm.

Beneficiary qualifies for immigrant classification as an advanced degree professional pursuant to section 203(b)(2) of the Act, and the implementing regulation at 8 C.F.R. § 204.5(k)(2). Finally, the Petitioner did not comply with the notice of filing requirements. Accordingly, the Petitioner has not met its burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of G-C-N-A-R-C-*, ID# 11475 (AAO Sept. 30, 2016)